



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 25, 1998

Mr. Raymundo Lopez
General Counsel
Garcia, Lopez, and Wood
214 W. Cano Street
Edinburg, Texas 78539

OR98-2028

Dear Mr. Lopez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118279.

The Edinburg Consolidated Independent School District (the "ISD") received a request for access to the "workers' comp[ensation] claim file" of a deceased ISD employee. You seek a determination whether some or all of the requested information is protected by Government Code sections 552.101, 552.102, and 552.117.

Section 552.101 requires withholding information "considered to be confidential by law, either constitutional, statutory, or by judicial decision." You cite section 402.083(a) of the Labor Code, which provides "[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the commission except as provided by this subtitle." In Open Records Decision No. 533 (1989), this office concluded that the predecessor to this statute applied only to information held by the Texas Worker's Compensation Commission (the "commission") or transmitted by the commission. See Labor Code § 402.086.

Of the information you submitted, only the "Carrier's Notice of Injury" form appears to have been transmitted to the ISD from the commission. We find no exception to the section 402.083(a) confidentiality provision which would permit its release to the requestor here. Thus, this form must be withheld. The rest of the information requested here does not appear to have been obtained from the commission, and thus would not be confidential under section 402.083(a). If, however, any of this other information was in fact obtained from the commission, you must withhold it under section 402.083(a).

You also express concern that the requested information may be protected under the common-law privacy aspect of section 552.101. However, common-law privacy protection lapses upon the death of the subject, and therefore does not apply to the information at issue. Open Records Decision No. 272 (1981).¹

You also ask whether parts of the information must be withheld under Government Code sections 552.117 and 552.024. These sections provide that a current or former public employee or official may opt whether to allow public access to his home address, home telephone number, social security number, and information that reveals that the individual has family members if, as of the time of the request for the information, the individual had elected to keep this information private. Open Records Decision Nos. 530 at 5 (1989), 482 at 4(1987), 455 (1987). If the employee whose records are at issue here elected to withhold this information under section 552.024, you must, under section 552.117, withhold this information from disclosure wherever it appears in the submitted material. Alternatively, if the individual's social security number was obtained or maintained pursuant to a provision of law enacted on or after October 1, 1990, it is confidential pursuant to section 405(c)(2)(C)(viii) of title 42 of the United States Code.

We have considered the exception you claim and have reviewed the documents at issue. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William Walker
Assistant Attorney General
Open Records Division

WMW/KEH/ch

Ref: ID# 118279

Enclosures: Submitted documents

¹As section 552.102 affords no greater protection to personnel records than that afforded by section 552.101, we need not address your section 552.102 claim. See *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App. -- Austin 1983, writ ref'd n.r.e.).

cc: Ms. Olga L. Aparicio
Crawford & Company
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McAllen, Texas 78504
(w/o enclosures)